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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,045	09/26/2003	Stephen J. Brown	6858P001C6	8048

7590 06/17/2005
HEALTH HERO NETWORK, INC.
2570 W. EL CAMINO REAL
SUITE 111
MOUNTAIN VIEW, CA 94306

EXAMINER

CHENG, JOE H

ART UNIT PAPER NUMBER

3713

DATE MAILED: 06/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/673,045	Applicant(s) BROWN ET AL.	
	Examiner Joe H. Cheng	Art Unit 3713	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 January 2005 and 17 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-74 is/are pending in the application.
- 4a) Of the above claim(s) 20-47 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 48-74 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| <p>1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/19/04</u>.</p> | <p>4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____</p> <p>5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p> <p>6) <input type="checkbox"/> Other: _____</p> |
|--|--|

DETAILED ACTION

1. In response to the Amendment filed on January 3, 2005 and March 17, 2005, claims 1-19 have been cancelled, claims 20-52 and the newly added claims 53-74 are pending. In addition, applicant is informed that all publications cited in the Information Disclosure Statement filed on July 19, 2004, which are crossed out by the Examiner, have not been considered by the Examiner, because CFR § 1.98 requirement is not met. Specifically, the publication date is missing.

Election/Restriction

2. Applicant's election without traverse of Group II in the reply filed on Paper No. 1/3/05 is acknowledged. Hence, the requirement is still deemed proper and is therefore made **FINAL**.

3. Claims 20-47 are withdrawn from further consideration by the examiner, 37 C.F.R. § 1.142(b) as being drawn to the nonelected invention Group I. Election was made **without** traverse in Paper No. 1/3/05.

Specification

4. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. The following title is suggested:
SYSTEM AND METHOD FOR MONITORING A PHYSIOLOGICAL CONDITION.

5. The disclosure is objected to because of the following informalities:

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The term "This application is a Continuation of Application Serial No. 09/971,785, filed October 4, 2001, which is a Continuation of Application Serial No. 09/119,546 filed July 20, 1998, now U.S. Patent 6,330,426, issued December 11, 2001, which is a Continuation-In-Part of Application Serial No. 08/953,883 filed on October 20, 1997, now abandoned, which is a Continuation-In-Part of 08/757,129 filed December 3, 1996, now U.S. Patent No. 6,144,837 issued on November 7, 2000, which is a Continuation-In-Part of U.S. Application Serial No. 08/334,643 filed November 4, 1994, now U.S. Patent No. 5,601,435 issued February 11, 1997.

This application is also a Continuation of Application Serial No. 09/119,546 filed July 20, 1998, which is a Continuation of Application Serial No. 08/958,786, filed October 29, 1997, now U.S. Patent 5,913,310, issued on June 22, 1999, which is a Continuation-In-Part of Application Serial No. 08/857,187, filed May 15, 1997, now U.S. Patent 5,918,603, issued July 6, 1999, which is a Divisional of Application Serial No. 08/247,716, filed May 23, 1994, now U.S. Patent 5,678,571, issued on October 21, 1997.

All of the above applications are herein incorporated by reference." on Pg. 1, line 14 to Pg. 2, line 3 should be recited as --This application is a Continuation of Application Serial No. 09/971,785, filed October 4, 2001, now abandoned, which is a Continuation of Application Serial No. 09/119,546, filed July 20, 1998, now U.S. Patent No. 6,330,426 B2, which is a Continuation-In-Part of Application Serial No. 08/953,883, filed October 20, 1997, now abandoned, which is a Continuation-In-Part of Application Serial No. 08/757,129, filed December 3, 1996, now U.S. Patent No. 6,144,837, which is a Continuation-In-Part of Application Serial No. 08/334,643, filed November 4, 1994, now U.S. Patent No. 5,601,435; and the application Serial No. 09/119,546, filed July 20, 1998, now U.S. Patent No. 6,330,426 B2, is

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also a Continuation of Application Serial No. 08/958,786, filed October 29, 1997, now U.S. Patent No. 5,913,310, which is a Continuation-In-Part of application Serial No. 08/857,187, filed May 15, 1997, now U.S. Patent No. 5,918,603, which is a Continuation of Application Serial No. 08/247,716, filed May 23, 1994, now U.S. Patent No. 5,678,571. All of the above applications are hereby incorporated by reference.--. Appropriate correction is required.

Drawings

6. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, all of the claimed structural elements of "at least one physiological data monitor" or "blood glucose monitor" including "a blood glucose indicator", the interface includes "a signal receiver", "converter" and "a multimedia controller", and the step of "moving images displayed on the display" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 48-74 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The references for the "at least one physiological data monitor" (as per claims 48 and 62), "a blood glucose monitor" (as per claims 49 and 51), "signal receiver", "converter" (as per claim 50), "the multimedia processor", "a multimedia controller" (as per claim 50 and 64), "the health monitoring system" (as per claim 54) and the step of "moving images displayed on the displays" (as per claims 57 and 70) are unclear. In addition, it is not understood as to what are the meaning of "to at least isolate electrically the physiological data monitor from the processor" (as per claim 48), or "configured to isolate electrically the user from the processor" (as per claim 51), or "utilizes optical isolation" (as per claim 52), or "electrically isolating the processor and the physiological data monitor" (as per claim 62), or "the electrical isolation is achieved by optical isolation" (as per claim 65). It is also not understood as to whether the "program controller" (as per claims 48 and 62) is referred to the "multimedia controller" (as per claim 50 and 64) or not. If it is not then what is the "multimedia controller" being referred to? Further, the method step of "enabling the user to select and control the **functions of the health monitoring method**" is unclear and confusing, because the function of the method has not being clearly set forth. Furthermore, the antecedent basis for "the multimedia processor" (as per claims 50 and 64) has not been clearly set forth. Finally, the terms "physiological data monitor a display device including a display screen" (as per claim 62) and "ois achieved" (as per claim 65)

should be respectively recited as --physiological data monitor; wherein the display device including a display screen-- and --is achieved--, so as to clarify the confusion.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 51 and 52 as best understood are rejected under 35 U.S.C. 102(b) as being anticipated by Brown (U.S. Pat. No. 5,307,263). The broadly claimed structure can be interpreted as the modular microprocessor-based health monitoring system of Brown. Figs. 1-10 of Brown broadly discloses the system for interactively monitoring a blood glucose level and for interactively providing health-related information comprising a blood glucose monitor (16, 74) adapted to measure a blood glucose level of a user and for generating a first signal response to a measurement of the blood glucose level, a processor (80) for receiving a second signal that is a function of the first signal, and interface (70) utilizing the optical isolation between the blood glucose monitor and the processor, a memory (90, 92, 94) for storing blood level data, and a display system (40, 48) for displaying a representation of the blood glucose level data, so as to provide health related information to an user in an interactive manner.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

12. Claims 48-50 and 53-74 as best understood are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (U.S. Pat. No. 5,307,263) in view of Quy (U.S. Pat. No. 5,601,435). It is noted that the teaching of Brown does not specifically disclose the audio speaker (as per claim 48) and selected the function of ECG or heart rate (as per claims 53 and 66) as required.

However, the teaching of Quy broadly discloses that such features of the audio speaker (7) and selected the function of ECG or heart rate (see abstract). Hence, it would have been obvious to one of ordinary skill in the art to modify the system and method of Brown with the features of the audio speaker and selected the function of ECG or heart rate as taught by Quy both Brown and Quy are directed to the system and method for monitoring a physiological condition and for providing health-related information, so as to provide the aural health-related information to the user.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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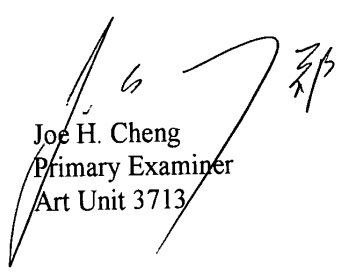
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Böcker et al (U.S. Pat. No. 5,507,288) - note Figs. 1-5;
Brown (U.S. Pat. No. 6,334,778 B1) - note Figs. 1-11 and 201-219;
Mault (U.S. Pub. No. 2003/0126593 A1) - note Figs. 1-8;
Brown (U.S. Pub. No. 2004/0106855 A1) - note Figs. 1-11.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joe H. Cheng whose telephone number is (571)272-4433. The examiner can normally be reached on Tue. - Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on (571)272-7147. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Joe H. Cheng
Primary Examiner
Art Unit 3713

Joe H. Cheng
June 1, 2005